

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	Douglas Durham	
Application No.:	10/764,095	Art Unit 2474
Filed:	January 23, 2004	
Conf. No.:	8239	
For:	SYSTEMS AND METHODS FOR DEFINITION AND USE OF A COMMON TIME BASE IN MULTI- PROTOCOL ENVIRONMENTS	
Examiner:	Redentor M. Pasia	
Customer No.:	22913	
Attorney Docket No.:	15436.163.1	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop **APPEAL**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A succinct, concise and focused set of arguments for which the panel review is being requested begins on page 2.

ARGUMENTS

Reconsideration of the application by a panel of examiners is respectfully requested in view of the following remarks. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the clear errors and omissions needed for a *prima facie* rejection. In addition, Applicants request that the Panel carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Panel's understanding.

Rejection under 35 U.S.C §103(a)

The Office action rejects claims 1, 3-5 under 35 U.S.C §103(a) over *Chamdani et al.* (U.S. Patent No. 7,133,416)¹ in view of *Yu et al.* (U.S. Patent No. 6,070,248) and rejects claims 15-17, and 19 under 35 U.S.C §103(a) over *Chndani et al.* in view of *Yu et al.* in further view of *Strong et al.* (U.S. Patent No. 6,335,931).

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”

This invention is directed to systems and methods for establishing a common time base in connection with a multi-protocol analyzer or group of single link analyzers employed with the operation of a multi-protocol communications system. For example, referring to Figure 4 of this

¹ Because *reference* is only citable under 35 U.S.C. §102(e) or 35 U.S.C. §102(a), Applicants do not admit that *reference* is in fact prior art with respect to any or all of the claims of the present application, but rather reserve the right to swear behind *reference* in this application or a divisional, continuation, or CIP thereof, thereby removing it as a reference.

application a multi-link protocol analyzer 400 includes multiple protocol specific devices, or link analyzers. Generally each of such devices is adapted for use with a data stream corresponding to a particular protocol. More specifically the multi-link protocol analyzer 400 includes a first link analyzer 402, a second link analyzer 404 and a third link analyzer 406, each configured for use with a different communications link and corresponding protocol.

Referring to Figure 5 of this application two traces 502 and 504 represent a series of data events sent across, respectively, a Fibre Channel link and a Gigabit Ethernet link of a multi protocol communications system, for example. As shown, the clock frequencies of the different communications protocols are different. The reference clock 506 is defined with reference to, but runs independently of, the communications protocol clocks employed in the multi-protocol communications system. See [0058]-[0060]. And, the various communications protocol clock frequencies ies are used as a basis to determine or define a suitable reference clock frequency. For example, a reference clock running at 66 MHz is suitable for use with a link clock running at 33 MHz, and a link clock running at 11 MHz.

In direct contrast to the Office Action, this is clearly different than the combination of references as each reference clock signal generated in *Yu* is generated from a single base signal source which is external to a computer peripheral device. That is, there is nothing in either *Yu* or *Chamdani* that teaches or suggests the determination of a reference clock signal from the clock signals of two different links. The Examiner admits that *Chamdani* does not show this element, which is discussed in the paragraph that spans pages 5 and 6 of the Office Action. The Office Action alleges that such element is shown in *Yu* at Figures 1-4; col. 1, line 66 to col. 2, line 8; col. 3, lines 12-54. However, the Applicant is unable to find such disclosure in the cited sections.

While *Yu* discloses that a reference signal can be generated from different sources located internal or external to a computer within which the peripheral device (e.g. an Ethernet adapter), *Yu* does not teach or suggest that each reference signal is based on more than one base source clock signal. And, *Yu* certainly does not teach or suggest that the reference signal is generated independent of the base source signal as *Yu* is clear that a costly source generator within the peripheral device would be disadvantageous. (Col. 3, lines 11-16). Rather, *Yu* is simply

interested in using a single clock signal for a peripheral device, such as an Ethernet adapter, which is not the same as the invention set forth in the claims and is not related to multi-protocol network analysis and the problems associated thereto.

Therefore, the Applicant respectfully cites to clear error as *Yu* does not determine a single reference clock frequency using the first and second clock frequencies form two different links of a multi-link protocol analyzer as required by the claims.

Charge Authorization

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

CONCLUSION

In view of the foregoing, Applicants submit that the pending claims are allowable. In the event that Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview or overcome by an Examiner's Amendment, Examiner is requested to contact the undersigned attorney.

Dated this 17th day of March, 2010.

Respectfully submitted,

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